



# DISCLOSURE OF DISABILITY IN A JOB INTERVIEW

BY BETSY JOHNSEN

In the United States, qualified applicants with disabilities have lower rates of employment than the general population,<sup>1</sup> despite more than 16 years of antidiscrimination laws<sup>2</sup> and data showing the low cost of reasonable accommodations.<sup>3</sup> According to many sources, job applicants with disabilities still face bias and illegal discrimination. Lawyers with disabilities are no better off. California attorneys, who enjoy added protection under state law, nevertheless have lower employment rates than their associates without disabilities.<sup>4</sup> Even the federal government, which has long been known as a disability-friendly employer and is the largest US employer of lawyers, has been employing decreasing numbers of lawyers with disabilities.<sup>5</sup>

Part of the problem may be the added challenge faced by lawyers with disabilities: The stereotype of an all-knowing, ever-confident attorney seems to clash with the person who needs reasonable accommodations.<sup>6</sup> Part of the solution may be for legal job applicants to emphasize, rather than hide, their disability-based strengths during the job interview.

Until now, lawyers with disabilities have generally been counseled to conceal or ignore their disabilities until they have a job offer in hand. But at the recent National Conference on the Employment of Lawyers with Disabilities, applicants were instead urged to reveal their physical or mental condition. As one speaker put it, "Disclose, discuss, and dispel." In other words, disclose your disability, discuss its impact on your professional life, and dispel any

misconceptions. Employment lawyers still see this as risky behavior. When is this traditional advice worth defying?

## WHEN DISCLOSURE IS THE ONLY OPTION

If the applicant has a visible disability, disclosure is not a choice. Likewise, the prospective employer will learn the status of an applicant who must ask for reasonable accommodations for the interview itself. Despite previous advice to conceal their disability, many other job applicants have also seen disclosure as a necessity, either to explain gaps of time in a résumé, or to include important activities that "branded" them, such as disability-related campus clubs or community boards.

## WHEN THERE IS A CHOICE

Applicants with disabilities usually have personal characteristics – skills, attitudes, and areas of knowledge – that arise from contending with their disability. These go beyond specific activities and provide qualifications law firms want. These advanced abilities are demonstrated not only by recent graduates who succeeded in law school but also by those lawyers whose disabilities occurred mid-career, causing them to have to adjust to radically new situations. These skills routinely include problem solving, resourcefulness, and the ability to adapt and learn quickly. Other skills, such as being organized, focused, and hard-working, are common. Because most people with disabilities have had to ask for help or understanding, communication and team-building skills are often highly developed.

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In addition to enhanced skills, a lawyer with a disability often has developed a sense of justice and an interest in fairness, which are important traits in legal work. Many people with medical conditions have also extended themselves to learn about special topics, such as insurance and benefits law, or acquired software skills that are practical and valuable commodities to prospective employers.

All of these factors are reasons to mention a disability rather than hide a source of strength during an interview that asks what the applicant can bring to a new firm.

A second major reason to disclose disability status is the opportunity it provides to display leadership. Taking charge in the interview of the discussion of a disability can show that the applicant has the confidence to bring up and handle a complicated and sometimes awkward subject. This is particularly helpful because employers have legal limits in raising the subject of an applicant's disability, as noted later in this article.

For people with visible disabilities, getting attention is often not difficult; it is also not a

negative quality for an attorney to demonstrate that he or she can effectively use that attention. In an article from the American Bar Association on hiring lawyers with disabilities,<sup>7</sup> a lawyer in private practice argues that the added scrutiny received by a trial lawyer with a visible disability can be a huge plus. A jury was riveted by the performance of an attorney coworker in a wheelchair, and he was able to capitalize on their interest in him to make the points of his case. During the job interview, an applicant can highlight this opportunity and begin to show how he or she would handle that extra attention when relevant.

A third reason to bring up a disability at the interview stage is to educate the prospective employer and to dispel misinformation about a particular condition. An interviewer who knows only a label and no facts is going to imagine the worst. What! You have epilepsy? Surely you will have a seizure every five minutes in the office and in court during final arguments. Hard of hearing? You must be 100% deaf and have intellectual problems too. The applicant can set the record straight on the scope of his or her condition. It is also an apt

time to inform employers of positive aspects of a condition, such as the high capacity and speed of workers with bipolar disorder and Attention Deficit Hyperactivity Disorder (ADHD).

## REASONS NOT TO DISCLOSE

All of these reasons for disclosing relate to the position itself. Any information revealed should be relevant to job responsibilities and demonstrate that the candidate is both qualified and capable. Otherwise, the traditional advice of employment lawyers still holds: Don't disclose a disability and risk discrimination prior to a job offer.

First, if an applicant does not have an apparent disability, has no necessity to reveal the disability, and has no disability-based skill or experience relevant to the job, then raising the issue would merely distract the interviewer.

Second, some physical and mental conditions may trigger prejudice and discrimination unlikely to be overcome. For example, ten years ago, I counseled all clients with HIV/AIDS to conceal their diagnosis, even if they discussed some non-revealing symptoms. It was too difficult to educate about HIV transmission and deal with prejudice about HIV and potential homophobia, although all those classes of discrimination were illegal in California.

Similarly, a person with some types of mental illness today may not want to risk encountering the high level of misinformation often found. But many factors will affect this question about the level of likely discrimination – celebrity revelations of medical condition (such as Mike Wallace’s recent revelation of suicidal depression), continuing advances in medical knowledge, the particular community where the interview occurs, the type of job sought, and the employer’s characteristics, among others.

## REASONABLE ACCOMMODATIONS

The need for reasonable accommodations if hired generally does not require disclosure or discussion of a disability prior to the start of employment. Despite this, some employment counseling websites recommend discussing accommodation needs during the interview in order for the employer to feel that they know the applicant and to avoid any later feelings that critical information has been withheld.

Speculation on an employer’s future comfort level is difficult at best. Trust is not the issue. An employee’s request for a reasonable accommodation may begin either before or after a job offer has been made. If the applicant feels that he or she has no disability-based strengths to discuss or feels that discrimination could be too large an issue, the applicant does not need to disclose until after the job offer. The EEOC recently issued a detailed guide on “Reasonable Accommodations for Attorneys with Disabilities” that discusses the types of accommodations, and when and how to request them.<sup>8</sup>

Discrimination still exists, whether conscious or not. To make sure it doesn’t influence the initial review process, it is probably still a good idea for the job candidate to conceal or ignore their disability until after they have secured an interview unless there are good reasons otherwise. Once the interview is confirmed, disclosure can begin, including requests for reasonable accommodations for the interview itself.

## THE ACTIONS OF EMPLOYERS IN THE HIRING PROCESS

Many employers are “disability-friendly.” They are interested in hiring diverse candidates both because of their sense of fairness and because they realize that their clients want to see lawyers they can identify with – including women, lawyers of color, lesbian and gay lawyers, and lawyers who have dealt with medical conditions. Moreover, employers committed to diversity know that the market is competitive, and if they want to hire and retain the best, they must include attorneys with disabilities.

In order to reach out to this group, an employer should add a welcome notice to job advertisements – such as a statement that it is an “Equal Opportunity Employer” and encourages diverse applicants – and send notices and applications to places where lawyers with disabilities will see them. An employer should specify a contact person to facilitate communication, including provision of any reasonable accommodations required for the application process itself.

The EEOC’s publication “Reasonable Accommodations for Attorneys with Disabilities” notes that during an interview employers may generally not ask applicants if they need reasonable accommodations to perform the job. However, if an employer knows a particular applicant has a disability, either because it is obvious or because the person has voluntarily revealed it, and the employer reasonably believes the disability might require accommodation to perform the job, the employer is entitled to ask the following two questions:

- Do you need reasonable accommodation to perform the job?
- If the answer is yes, what accommodation do you believe you need?

Employers can assist applicants in assessing whether they will need an accommodation by making clear the job requirements, the duties to be performed, and the expected level of performance.

## CONCLUSION

Lawyers with disabilities would trade the chance to inspire for the chance to be hired. Their disability-based strengths, disclosed during the interview process, may provide the opportunity for an employer to see them as competent, confident future employees. ■

## ENDNOTES

1. Harris Interactive, Inc. (2004). NOD/Harris 2004 survey of Americans with disabilities (Study No. 20835).
2. The major federal laws, the Americans with Disabilities Act of 1990 (12 U.S.C. Sec. 12101) and Section 501 of the Rehabilitation Act of 1973, (29 U.S.C.A. Sec. 701) are now well established in regulatory and case law.
3. See, for example, Job Accommodation Network, “Workplace Accommodations, Low Cost, High Impact,” <http://www.jan.wvu.edu/media/LowCostHighImpact.pdf>.
4. State Bar of California, “Challenges to Employment and the Practice of Law Continue to Face Attorneys with Disabilities,” [http://calbar.ca.gov/calbar/pdfs/reports/2004\\_Attorneys-with-Disabilities-Report-Exec-Sum.pdf](http://calbar.ca.gov/calbar/pdfs/reports/2004_Attorneys-with-Disabilities-Report-Exec-Sum.pdf).
5. According to EEOC Commissioner Christine Griffin, quoted in American Bar Association, <http://www.abanet.org/media/youraba/200606/article08.html>.
6. This might have once been said about others sitting at the diversity table, such as women, racial and ethnic minorities, and lesbian and gay attorneys.
7. Ibid, American Bar Association, <http://www.abanet.org/media/youraba/200606/article08.html>.
8. U.S. Equal Employment Opportunity Commission, <http://www.eeoc.gov/facts/accommodations-attorneys.html>.